

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 217 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Altman and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 380

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Economic Development</u>	<u>10 Y, 0 N</u>	<u>West</u>	<u>Croom</u>
2) <u>Economic Expansion & Infrastructure Council</u>	<u></u>	<u>West</u>	<u>Tinker</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 217 creates an exemption from the state sales and use tax for:

- An aircraft that primarily will be used in a fractional aircraft ownership program; and
- Parts or labor used in the completion, maintenance, repair, or overhaul of an aircraft for primary use in a fractional aircraft ownership program.

Additionally, HB 217 provides for a maximum tax of \$300 on the sale or use in this state of a fractional aircraft ownership interest in aircraft pursuant to a fractional ownership program. This maximum tax applies to the total consideration paid for the fractional ownership interest, including amounts paid by the fractional owner as monthly management or maintenance fees.

HB 217 defines a “fractional aircraft ownership program” as a program that meets the requirements in the Federal Aviation Administration regulation Title 14, chapter I, part 91, subpart K, C.F.R., except the program must include a minimum of 25 aircraft owned or leased by the business or affiliated group providing the program.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes – The bill creates an exemption from the state sales and use tax for fractional aircraft and related parts and labor. Also, the bill provides a maximum sales and use tax on ownership interest related to fractional aircraft ownership programs.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Aviation-related State Tax Exemptions

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of Florida's six-percent sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Florida law currently provides more than 200 exemptions.

A number of sales and use tax exemptions related to aviation exist in s. 212.08, F.S.:

- Aircraft repair and maintenance labor charges – For qualified aircraft, aircraft of more than 15,000 pounds maximum certified takeoff weight, and rotary wing aircraft of more than 10,000 pounds maximum certified takeoff weight.
- Equipment used in aircraft repair and maintenance – For qualified aircraft, aircraft of more than 15,000 pounds maximum certified takeoff weight, and rotary wing aircraft of more than 10,300 pounds maximum certified takeoff weight.
- Aircraft sales and leases – For qualified aircraft and for aircraft of more than 15,000 pounds maximum certified takeoff weight used by a common carrier, as defined by federal regulations.
- Aircraft that is purchased in Florida, but will not be used or stored in this state, qualifies for either a full or partial sales tax exemption, depending on the circumstances.

“Qualified aircraft” is defined in s. 212.02(33), F.S., as:

- Any aircraft having a maximum certified takeoff weight of less than 10,000 pounds;
- Is equipped with twin turbofan engines that meet Stage IV noise requirements;
- Is used by a business operating as an on-demand air carrier under Federal Aviation Administration Regulation Title 14, chapter I, part 135, Code of Federal Regulations; and
- Is used by a business that owns and operates a fleet of at least 25 such aircraft in Florida.

The sales and use tax exemptions for “qualified aircraft,” commonly referred to as Very Light Jets (VLJs), were enacted in 2006 to encourage DayJet Corporation and similar “air taxi” businesses to locate in Florida.

Fractional Aircraft Ownership Programs

In a “fractional aircraft ownership program,” individuals or entities purchase an undivided interest in a specific, serial-numbered aircraft, and are guaranteed availability of the plane (or a similar one) within a time-frame specified by contract. Typically, fractional aircraft ownership contracts also require fractional owners to pay management fees for the operation, upkeep, and storage of the planes.

NetJets, based in New Jersey, is generally acknowledged by the industry as the first fractional ownership operation. It began in 1986 with the creation of a program that offered aircraft owners increased flexibility in the ownership and operation of aircraft, and provided for the management of the aircraft by an aircraft management company. The aircraft owners participating in the program agreed not only to share their own aircraft with others having a shared interest in that aircraft, but also to lease their aircraft to other owners in the program (called a “dry lease exchange”). The aircraft owners used a common management company to provide aviation management services including maintenance of the aircraft, pilot training and assignment, and administration of the leasing of the aircraft among the owners.

During the 1990s, the growth of fractional aircraft ownership programs was substantial in terms of size, numbers, and complexity of operations and issues. In 2001, the Federal Aviation Administration (FAA) adopted new rules on fractional aircraft ownership. The new rules established that an aircraft’s fractional owners and the aircraft management company share the responsibility for aircraft operations and passenger safety. The new rules also established ownership definitions and clarified certain administrative requirements for fractional aircraft ownership. For example, the rules define “fractional ownership interest” as equal to, or greater than, 1/16th of a subsonic, fixed-winged, or powered-lift program aircraft; for a helicopter, the ownership interest can be as small as 1/32nd.

Fractional aircraft ownership continues to grow in popularity. According to the General Aviation Manufacturers Association, fractional aircraft programs comprised almost 14 percent of the business jets purchased worldwide in 2006. The number of aircraft operating in fractional programs increased from 949 in 2005 to 984 in 2006 (a 3.7-percent increase) and the number of entities and individuals involved in fractional ownership rose to 4,903 in 2006 (a 4.5-percent increase over 2005 figures). Similarly, the FAA’s Aerospace Forecast for Fiscal Years 2006-2007 noted that flights by fractional aircraft are outpacing the rest of the aviation industry, up nearly 3 percent in the first nine months of 2006 over the same time period in 2005.

Florida has one fractional aircraft ownership program: Avantair, which relocated from New Jersey to Clearwater, Florida. But some of the airplanes typically used in fractional aircraft ownership programs fall between the current 10,000-pound and the 15,000-pound certified takeoff weight thresholds, so Avantair and other fractional companies that have expressed interest in moving to Florida are ineligible for the tax exemptions.

Effects of Proposed Changes

The bill creates a 100 percent exemption from the state sales and use tax for:

- An aircraft that primarily will be used in a fractional aircraft ownership program; and
- Parts or labor used in the completion, maintenance, repair, or overhaul of an aircraft for primary use in a fractional aircraft ownership program.

Additionally, the bill provides for a maximum tax of \$300 on the sale or use in this state of a fractional aircraft ownership interest in aircraft pursuant to a fractional ownership program. This maximum tax applies to the total consideration paid for the fractional ownership interest, including amounts paid by the fractional owner as monthly management or maintenance fees.

The bill defines a “fractional aircraft ownership program” as a program that meets the requirements set forth in FAA regulation Title 14, chapter I, part 91, subpart K, C.F.R., except the program must include a minimum of 25 aircraft owned or leased by the business or affiliated group providing the program. According to s. 911.1001(5), C.F.R.:

A fractional ownership program or program means any system of aircraft ownership and exchange that consists of all of the following elements:

- The provision for fractional ownership program management services by a single fractional ownership program manager on behalf of the fractional owners;
- Two or more airworthy aircraft;
- One or more fractional owners per program aircraft, with at least one program aircraft having more than one owner;
- Possession of at least a minimum fractional ownership interest in one or more program aircraft by each fractional owner;
- A dry-lease aircraft exchange arrangement among all of the fractional owners; and
- Multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program.

To qualify for the exemption a purchaser must provide the proper eligibility certification in a form determined by the Department of Revenue.

C. SECTION DIRECTORY:

Section 1: Amends s. 212.02, F.S., to provide a definition for a “fractional aircraft ownership program.”

Section 2: Amends s. 212.08, F.S., to provide sales and use exemptions for an aircraft for primary use pursuant to a fractional aircraft ownership program and for the parts and labor used in the maintenance, repair and overhaul of such an aircraft.

Section 3: Creates s. 212.0597, to provide a maximum tax on the sale or use of fractional aircraft ownership interests.

Section 4: Provides the act will take effect July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	<u>FY 08-09</u>	<u>FY 09-10</u>	<u>FY 10-11</u>
General Revenue	(\$0.8M)	(\$1M)	(\$1.1M)
Trust Funds	Insignificant	Insignificant	Insignificant

2. Expenditures:

The Department of Revenue may incur expenses administering the program but the department should be able to absorb these costs with current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

According to the Revenue Impact Estimating Conference, the bill will have a recurring negative fiscal impact on local government revenues of \$200,000.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Companies interested in offering fractional aircraft ownership programs in Florida, and individuals or entities wishing to purchase interests in these aircraft, will benefit from not having to pay certain sales taxes related to their purchases and operations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill has a fiscal impact on local governments; however, an exemption applies because the fiscal impact is insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue raised several issues in their analysis of the bill:

- Proposed s. 212.08(19)(a), F.S., provides that the tax imposed by Chapter 212, F.S., does not apply to the sale or use of aircraft for “primary use” in a fractional aircraft ownership program. The term “primary use” is undefined and may be too vague to properly enforce.
- Proposed s. 212.08(19)(b), F.S., provides that the sale, lease, repair, or maintenance to be exempted must be for the exclusive use of the purchaser or lessee. This proposed paragraph raises two concerns: (1) Does the phrase “purchaser or lessee” refer to the operator of the

fractional aircraft ownership program or to the individual owners of fractional interests? (2) If the phrase "purchaser or lessee" refers to the operator of the program, then the operator cannot furnish the dealer with a certificate stating that the purchase or lease is for the exclusive use of the purchaser or lessee, because the operator will subsequently sell fractional interests in the aircraft.

- Proposed s. 212.0597, F.S., provides a maximum tax of \$300 on the sale or use in Florida of a fractional ownership interest in aircraft pursuant to a fractional aircraft ownership program when the interest is transferred upon approval of the operator of the program. This proposed language raises several questions: (1) Does the term "transferred" include the sale of an interest or is this term limited to other forms of transfer (e.g., gifts)? (2) Does the maximum tax take into account applicable discretionary sales surtax? (3) How would a dealer record the maximum tax of \$300, which is not based on a sales price, on its sales tax return? (4) When fractional interest is sold to another person, does the maximum tax of \$300 apply again?

The proposed aircraft, labor, and parts exemption in s. 212.08(19), F.S., are required to be documented by a purchaser's certificate for purposes of claiming the exemptions. The Department of Revenue may have to adopt such a certificate by rule.

D. STATEMENT OF THE SPONSOR:

The fiscal impact should be zero or even have a positive fiscal impact.

Without this tax exemption it is likely existing fractional aircraft companies will leave Florida and new ones will not move into the State. Under present law existing companies can legally avoid the tax by holding newly purchased aircraft out of the State for a period of six months. If we lose these companies we will lose the tax benefit of having the fastest growing sector of the aircraft industry as a part of our economy.

The impact conference analysis recognizes that the negative fiscal impact "is assuming the planes are initially domiciled (in Florida) in the first 6 months. If legal tax avoidance is 100%, the current revenue impact could be zero." It does not seem reasonable to assume that everyone would voluntarily pay taxes that they can legally avoid.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On Thursday March 13, 2008, the Committee on Economic Development reported the bill favorably with an amendment. The amendment:

- Clarified the definition for "fractional aircraft ownership program" by referencing s. 1504(a) of the Internal Revenue Code of 1986, as amended;
- Replaced the term "exclusive use" with "primary use" relating to the requirement of a purchaser or lessee to provide an aircraft dealer with certain information; and
- Clarified language relating to the maximum sales and use tax that may be imposed on a fractional aircraft ownership program.